Nos. 387 - 388

In the Supreme Court of the United States

OCTOBER TERM, 1942

RECONSTRUCTION FINANCE CORPORATION, PETITIONER

v.

BANKERS TRUST COMPANY, TRUSTEE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

INDEX

CITATIONS

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The Solicitor General, on behalf of Reconstruction Finance Corporation, a public corporation created by Act of Congress,[1] prays that writs of certiorari issue to review the decree of the Circuit Court of Appeals for the Eighth Circuit rendered in this cause on June 10, 1942. The decree affirmed an order of the District Court of the United States for the Eastern District of Missouri, making an allowance for services rendered and expenses incurred by the trustee under an indenture of a railroad company in reorganization under Section 77 of the Bankruptcy Act without utilization of the procedure directed by Section 77 (c) (12).

[1] Act of January 22, 1932, c. 8, 47 Stat. 5.

OPINIONS BELOW

The opinion and order of the District Court (R. 87-88) is not reported; the opinion of the Circuit Court of Appeals (R. 102) is reported in 129 F. (2d) 122.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 10, 1942 (R. 108). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 24 (c) of the Bankruptcy Act.

QUESTION PRESENTED

Whether the District Court having jurisdiction over a railroad reorganization under Section 77 of the Bankruptcy Act may make an allowance to an indenture trustee for services rendered in connection with the proceedings and plan without prior reference to the Interstate Commerce Commission for the setting of a maximum in accordance with the procedure provided by Section 77 (c) (12) of that Act.

STATUTE INVOLVED

Section 77 (c) (12) of the Bankruptcy Act provides:

> (12) Within such maximum limits as are fixed by the Commission, the judge may make an allowance, to be paid out of the debtor's estate, for the actual and reason-

able expenses (including reasonable attorney's fees) incurred in connection with the proceedings and plan by parties in interest and by reorganization managers and committees or other representatives of creditors and stockholders, and within such limits may make an allowance to be paid out of the debtor's estate for the actual and reasonable expenses incurred in connection with the proceedings and plan and reasonable compensation for services in connection therewith by trustees under indentures, depositaries and such assistants as the Commission with the approval of the judge may especially employ. Appeals from orders of the court fixing such allowances may be taken to the circuit court of appeals independently of other appeals in the proceeding and shall be heard summarily. The Commission shall, at such time or times as it may deem appropriate, after hearing, fix the maximum allowances which may be allowed by the court pursuant to the provisions of paragraph (12) of this subsection (e) and, after hearing if the Commission shall deem it necessary, the maximum compensation which may be allowed by the court pursuant to the provisions of paragraph (2) of this subsection (e). [11 U. S. C., Sec. 205 (e) (12).]

STATEMENT

The St. Louis-San Francisco Railway Co. (hereinafter sometimes referred to as "Frisco") filed

its petition, on May 16, 1933, under the provisions of Section 77 of the Bankruptcy Act in the District Court for the Eastern District of Missouri. This petition was approved by the court on May 17, 1933. (R. 2.) Part of the Frisco system was formerly known as the Kansas City, Fort Scott & Memphis Railway Co., and Bankers Trust Company, respondent herein, is the successor corporate trustee under the refunding mortgage covering that line and certain other property of the Fort Scott & Memphis Railway Co. (R. 2–3.) Bankers Trust Company petitioned for and was granted leave to intervene both before the District Court (R. 24) and before the Interstate Commerce Commission. (R. 25.) The indenture trustee has thus been a party to the proceedings for the reorganization of the Frisco, both before the District Court and before the Interstate Commerce Commission, and it has participated in such proceedings. (R. 10, 14–33.)

On December 30, 1940, the District Court, having before it a plan for the reorganization of Frisco approved by the Interstate Commerce Commission, directed the filing of:

> All petitions for allowance for compensation for services rendered or for expenses (including reasonable attorneys' fees) incurred either under clause (12) of subsection (c) of Section 77 of the Bankruptcy Act or otherwise * * *. [R. 6, 7.]

Pursuant to this order, the indenture trustee filed two petitions for allowance for services rendered and expenses incurred by it in the reorganization proceedings, the one being numbered 266 and the other 267. The total amount of the allowance asked in each petition was $26,732.16, of which $10,000 was asked for the services of the Bankers Trust Company as trustee under the refunding mortgage, $16,000 for fees of its counsel, and the balance for expenses. (R. 14, 30–31, 83, 85.) In Petition No. 267 compensation is asked pursuant to Section 77 (c) (12) for the identical services and expenses covered by Petition No. 266, but the right to object to the jurisdiction of the Interstate Commerce Commission is reserved. This petition, in compliance with the order of the court, was referred to the Interstate Commerce Commission for the setting of a maximum. (R. 3.) Before action by the Commission upon Petition No. 267, Petition No. 266 came on for hearing before the District Court.

In Petition No. 266, the indenture trustee alleged that the services and expenses for which compensation was asked "have not been rendered or incurred 'in connection with the proceedings and plan'" for the reorganization of debtor but were rendered and incurred as trustee under the indenture in performance of its obligations thereunder for the benefit of the trust estate as distinguished from the debtor's estate. (R. 26–27.) By the terms of the indenture it was provided (R. 17):

> The Trustees shall be entitled to reasonable compensation for all services rendered by them in the execution of the trusts hereby created, which compensation as well as all reasonable expenses necessarily incurred and actually disbursed hereunder, the Railway Company agrees to pay and hereby charges on the trust estate.

The petition was opposed by the trustees of the debtor and by the Reconstruction Finance Corporation, a party by intervention (R. 3-4, 86). The District Court on June 30, 1941 held (R. 87), without giving reasons, that Section 77 (e) (12) was not applicable to Petition No. 266, and that under the provisions of the mortgage the claim was a proper charge on the trust estate subject to the mortgage. The court made no finding as to whether the services rendered and expenses incurred were or were not in connection with the reorganization proceedings and plan. It directed the indenture trustee to pay to itself the *full amount* of its claim out of the cash on deposit with it as trustee under the mortgage. (R. 88.)

Meanwhile, the Interstate Commerce Commission held hearings, as necessitated by Section 77 (e) (12), on the propriety and reasonableness of the amounts claimed by Petition No. 267 and by the petitions of others filed in accordance with the court's order of December 30, 1940. By its report and order of August 27, 1941, the Commission held that it had the right to set a maximum for all

services and expenses covered by Petition No. 267 which were rendered in connection with the proceedings and plan during the pendency[*] of the Section 77 proceedings. *St. Louis-San Francisco Ry. Co. Reorganization*, 249 I. C. C. 195, 218, 236. Accordingly, the Commission fixed maxima on Petition No. 267 for the indenture trustee and its counsel as follows:

	Amount claimed		Maximum fixed	
	Fee	Expenses	Fee	Expenses
Bankers Trust Company, Trustee	$35,000	$207.50	$5,000	$207.50
White & Case, Counsel	75,000	176.00	5,000	137.50
Bryan, Williams, Cave & McPheeters, Counsel	5,000	44.50	2,000	11.50
	115,000	$428.00	$12,000	$356.50

The District Court took no action on this part of the Commission's report and order.

Reconstruction Finance Corporation appealed from the order of the District Court on Petition No. 266 to the Circuit Court of Appeals, both under the provisions of Rule 73 of the Rules of Civil Procedure and by appeal to the discretion of the Circuit Court of Appeals. That court

[*] The Commission stated: "The maximum limits of allowances fixed hereinafter for this mortgage trustee and its counsel do not embrace any services rendered or expenses incurred in proceedings antedating the reorganization proceedings under section 77, since, in our opinion, allowances for such services and expenses are within the sole control of the bankruptcy court acting pursuant to section 77." (249 I. C. C. at 220.)

granted the latter appeal and ordered that the two appeals be consolidated. (R. 97.) The appeal was supported by the Interstate Commerce Commission which filed a brief *amicus curiae*.

The Circuit Court of Appeals affirmed the judgment of the District Court, holding that the fact that the services were "in a literal sense" incurred in connection with the proceedings and plan was not determinative.

REASONS FOR GRANTING THE WRIT

1. The decision below will, unless reviewed, have an unsettling effect on the administration of railroad reorganizations before both the Interstate Commerce Commission and the courts.

The St. Louis-San Francisco Railway Company is one of twenty-nine railroads or railroad systems now being reorganized under the provisions of Section 77 of the Bankruptcy Act. In most of these proceedings indenture trustees have participated and characteristically there are several indenture trustees in a proceeding. With the exception of Bankers Trust Company as an indenture trustee in the St. Louis-San Francisco and Chicago Rock Island & Pacific Reorganizations, Bankers Trust Company and Irving Trust Company as trustees in the New York, New Haven & Hartford Reorganization, and New York Trust Company as trustee in the Fort Dodge, Des Moines & Southern Reorganization, all indenture trustees have filed petitions for allowance under

the procedure provided by Section 77 (c) (12) requiring forwarding by the court to the Commission for the setting of maxima. Thus far mortgage trustees have filed ninety-seven petitions for compensation and allowance under the terms of Section 77 (c) (12) and their counsel have filed one hundred seventy-four petitions supplementary thereto.

The present decision marks the first successful attack on the application of Section 77 (c) (12) to indenture trustees. The District Court for the District of Connecticut dismissed a similar attack by Bankers Trust and Irving Trust Companies in *Matter of the New York, New Haven and Hartford Railroad Company*, Debtor, No. 16562, in a well-considered opinion by Judge Hincks which is set forth in Appendix A, *infra*, p. 15. Subsequently the opinion of the court below was brought to the attention of Judge Hincks in a petition for rehearing, which he denied on June 24, 1942, stating:

> This petition for rehearing is based upon a decision in the Eighth Circuit entered a week subsequent to my decision on Petition for Order 492, in a reorganization matter under Section 77, wherein Bankers Trust Company had participated as Trustee of a mortgage on the Kansas City, Fort Scott and Memphis Railway Company.
>
> While I appreciate the opportunity thus afforded me to reconsider my conclusions in the light of that decision, my views are

> such that, even after a careful reading of that decision, I feel constrained to adhere to my original decision in the absence of direct appellate mandate to the contrary. [Pr. Ct. Rec. p. 9561.]

Notice of appeal has been given and petitions for leave to appeal have been filed with the Circuit Court of Appeals for the Second Circuit. Similarly, the District Court for the Southern District of Iowa had held, in a decision now superseded by that of the court below, that prior reference to the Commission must be made of all claims for fees and expenses of indenture trustees. *In the Matter of the Fort Dodge, Des Moines & Southern Railroad Co.*, unreported, see Appendix B, *infra*, p. 25. In a third case, *In the Matter of the Chicago, Rock Island and Pacific Ry. Co.*, in the District Court for the Northern District of Illinois, wherein briefs were filed in September, 1941, the court is apparently awaiting the outcome of the case at bar.

The decision below overturns the settled practice of the Interstate Commerce Commission, which has repeatedly held that under Section 77 (c) (12) it is granted jurisdiction to set maxima on all services relevant to the plan and proceeding whether rendered by indenture trustees or by others. See especially *Chicago, Milwaukee, St. Paul & Pacific Railroad Co. Reorganization*, 242 I. C. C. 113; *Erie Railroad Co. Reorganization*, 242 I. C. C. 517; *New York, New Haven &*

Hartford Railroad Company Reorganization, 247 I. C. C. 677; and *St. Louis-San Francisco Ry. Co. Reorganization*, 249 I. C. C. 195, 220, 236 (applying this rule to Petition No. 267).

2. The decision below, unless reviewed and reversed, will tend to increase the delay and expense of reorganization proceedings, and thus subvert two of the primary objectives of Section 77. See *Continental Illinois Nat. Bank & Trust Co.* v. *Chicago, R. I. & Pac. Ry. Co.*, 294 U. S. 648, 685. It cannot be doubted that the decision will breed controversy and litigation in the twenty-nine pending proceedings. And if other courts should follow the decision, which, it will be noted, awarded the indenture trustees the full amount of their claims, the allowances out of the debtor's estate for fees and expenses are likely to be materially increased. This result would follow from an acceptance of respondent's theory that there are two sets of criteria for compensation: one applicable by the Commission in a proceeding under Section 77 (c) (12), and the other by a court in a proceeding for determining the amount of a mortgage lien for expenses. The theory was specifically rejected by Judge Hincks in the opinion heretofore mentioned (see Appendix A, *infra*, p. 19). Should it, however, be adopted, the effect may be forecast from an analysis of claims by mortgage trustees and maximum allowances thereon by the Commission in nine of the largest reorganizations, including

the present one. The figures set forth in Appendix C, *infra*, p. 27, show that the maxima allowed to such trustees have aggregated 37.4 per cent of their claims, as compared with allowances of 47.9 per cent of the amounts claimed by all parties (excluding debtor's trustees, reorganization managers and their counsel). The amounts claimed by mortgage trustees were 36.6 per cent of the total claims of all parties, and the allowances were 28.6 per cent of the total allowances to all parties.

3. The decision below is, we submit, unsupportable in the light of the plain language of Section (77) (c) (12), which expressly embraces

> an allowance to be paid out of the debtor's estate for the actual and reasonable expenses incurred in connection with the proceedings and plan and reasonable compensation for services in connection therewith by trustees under indentures, * * *.

It was acknowledged by the majority of the court below that the allowance in question is to be paid "out of the estate of the debtor", which includes encumbered and unencumbered property of the debtor (R. 105). Nor was it denied that the services were rendered in connection with the reorganization proceedings and plan, in a factual sense (R. 106). The basis of the decision, that the trustee was in any event obligated to serve the interests of the bondholders and had a contractual

claim for "reasonable compensation" under the terms of the indenture (R. 17), is in effect a repeal of the applicable portion of Section 77 (c) (12).

The procedure plainly required by the statute raises no constitutional difficulties. The Constitution does not guarantee to respondent a judicial determination of reasonable maximum for compensation; and in any event, the statute permits judicial review of the maximum fixed by the Commission. Section 77 (e) provides:

> the judge shall approve of the plan if satisfied that * * * (2) the approximate amounts to be paid by the debtor, or by any corporation or corporations acquiring the debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed so far as they can be ascertained at the date of such hearing, *are reasonable*, are within such maximum limits as fixed by the Commission, and are within such maximum limits to be subject to the approval of the judge * * *. [Italics added. 11 U. S. C. Sec. 205 (e)].

If the judge finds that the amount fixed as a maximum is not reasonable, he may disapprove the plan. Section 77 (e) provides:

> If the judge shall not approve the plan, he shall file an opinion, stating his conclusions and the reason therefor, and he shall enter an order in which he may either dismiss the proceedings, or in his discretion and on motion of any party in interest refer

the proceedings back to the Commission for further action, in which event he shall transmit to the Commission a copy of any evidence received. [11 U. S. C. Sec. 205 (e)].

It follows that any order of the Commission setting a maximum may be referred back to the Commission where the Court concludes that a plan incorporating such allowances could not be approved.

Finally, any question regarding the reasonableness of a maximum which the Commission has fixed or may fix should be raised after the statutory procedure has been pursued. Cf. *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

CLAUDE E. HAMILTON, JR.,
General Counsel,
Reconstruction Finance Corporation.

SEPTEMBER 1942.

APPENDIX A

In the District Court of the United States for the District of Connecticut

No. 16562

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

IN THE MATTER OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, DEBTOR

Memorandum of Decision on Motions to Dismiss Petitions for Orders 492 and 611

These petitions are brought each by an indenture trustee, No. 492 by Bankers Trust Company as trustee under the First and Refunding Mortgage and No. 611 by Irving Trust Company as trustee under a Collateral Trust Indenture, asking the Court without reference to or restriction by any maximum allowances set by the Interstate Commerce Commission in these proceedings to adjudicate the amounts on account of the services and expenses of the respective petitioners and their counsel in these proceedings, to decree that the allowances thus established constitute under the provisions of the respective indentures prior liens in favor of the petitioners upon the respective mortgaged properties, or upon securities to be issued to the bondholders secured thereby; and to enforce said liens.

The matter is before the Court upon motions to dismiss these petitions filed and pressed by the

Interstate Commerce Commission through its counsel, by the New Haven Trustees, and by Reconstruction Finance Corp., a collateral noteholder in these proceedings. The petitions have also been opposed by brief in behalf of the Mutual Savings Bank Group.

I

I hold that the services rendered and expenses incurred by the petitioners and their attorneys are covered by the liens of the respective mortgage indentures in so far as said services were reasonably necessary and adapted (a) to protect and advance in these proceedings the interests of the underlying bondholders, (b) to advance the achievement of reorganization, and (c) to protect the mortgage trustee from personal liabilities for which under the mortgage it has a right of indemnity against the debtor's estate.

I cannot accept the view that the petitioners were acting as mere volunteers in the premises. They were acting at least in substantial part under the contract of the trust indenture whereby they were expressly entitled to "reasonable compensation" and to "reimbursement of reasonable expenses, including counsel fees" for all services rendered "in the execution of the trusts hereby created." The indenture was drawn long prior to the enactment of Section 77. It provided that in case of default the pefitioner, as also bondholders, might enter upon and operate the mortgaged property for the benefit of all bondholders; also that the petitioner might foreclose the mortgage and obtain a receiver.

I think no one will dispute that the petitioners would have been remiss in their proper discharge of their trusts if in an equity receivership they had left their cestuis without representation or after default had failed to take appropriate action for their protection. Certainly this equitable obligation was not precisely to be measured by their possible liability in an action at law for nonfeasance. I find nothing in Section 77 which exonerates mortgage trustees from their equitable obligation to take action appropriate to the same objective. Such a view, indeed, seems repugnant to Congressional policy as declared in the Trust Indenture Act of 1939. See 15 U.S.C.A. 77bbb and 77ooo (c).

To be sure, the Bankruptcy Act substitutes statutory remedies for the remedies incident to an equity receivership: to the extent that the new remedies vary from the old the course of activity by a mortgage trustee and much of the incidental—but inescapable—detail requires adaptation to that change. But this change did not extinguish any rights or obligations growing out of the mortgage indenture nor transform the status of the petitioners from that of responsible trustees to that of volunteers. And the activities reasonably required for their own protection and for the protection of their bondholders under the exigencies of reorganization under Section 77, as indeed also services contributing to the achievement of reorganization, fell within the lien of the mortgage contracts. Cf. *Straus* v. *Baker Co.*, 87 Fed. (2nd) 401, at page 408.

I notice that the Commission has made a distinction between "regular and routine services performed in administering the trust, ordinarily covered by an annual maintenance fees" and other "special" services performed in the reorganization proceedings. This distinction seems to me entirely valid. Such routine services cannot constitute allowances in the reorganization proceedings and are not subject to the jurisdiction of the Commission, because they are not "incurred in connection with the proceedings and plan", as specified under subdivision (c) (12). Nevertheless, both the routine services and the services in the reorganization proceedings may be covered by the lien of the mortgage indenture.

II

I hold that all compensable services and expenses of the petitioners which were incurred in connection with the proceedings and plan, fall within the provisions of Section 77 (c) (12).

Just as Section 77 provides a technique of reorganization which does not require the enforcement of mortgage liens, so it contemplates by subdivision (c) (12) a technique for the liquidation and discharge of contractual claims for services which obviates the necessity of the foreclosure of the covering liens. And the fact that the services and expenses of these petitioners happen to be the subject-matter of contract liens no more excludes their allowance from the effect of (c) (12) than the existence of outstanding mortgages operates to immunize the bondholders secured thereby from the other provisions of the

Act which contemplate that their claims may be discharged by the substitution of securities of equivalent value under a plan which satisfies the requirements of the Act. The petitioners' contract provided that they should receive reasonable compensation and reimbursement. The same standard of liquidation is prescribed by Section 77. Only the method and the forum for accomplishing the liquidation is changed.

The language of (c) (12) specifies a single method which shall apply to all parties alike. That Congress indeed intended that subdivision (c) (12) should apply to Indenture Trustees who might happen to have a lien, as well as to other parties in interest and committees who were without a lien, abundantly appears from the legislative history of the Act. There is thus no occasion for the modification of the inclusive language of (c) (12) by the process of construction.

And certainly the construction advanced by the petitioners is inadmissible. They point to the language of (c) (12) under which the court may order the allowances thereby authorized to be paid "out of the debtor's estate". I agree that this language is broad enough to authorize in a proper case payment from the free (unmortgaged) assets of the estate. In this respect, perhaps the Act goes further than the equitable rule whereby allowances for services in behalf of mortgaged property might be charged against the mortgaged assets. But I cannot agree that the scope of (c) (12) is limited to such allowances as may only be charged against the general (unmortgaged) estate. The language used, viz., "the debtor's

estate", is broad enough to include the mortgaged assets as well as the free assets. And if the *enforcement* provisions of (e) (12) are entitled to this broad construction, as I hold, there is no room left for the argument that the *liquidation* provisions of (e) (12) with the accompanying grant of jurisdiction to the Commission must by a narrower process of construction be confined to services not covered by lien.

III

Nor is the Act, thus construed, unconstitutional. The petitioners' liens are not impaired. Like the liens of all the mortgagees and pledgees in these proceedings, the remedy only is suspended. If these proceedings shall be dismissed, the lien forthwith becomes enforceable with all its pristine vigor. Such a suspension of the remedy is not inconsistent with the Constitution. *Continental Bank* v. *Rock Island Ry.*, 294 U. S. 648. Cf. *Wright* v. *Union Central Life Ins. Co.*, 311 U. S. 273, at 279.

The petitioners further complain that under the Act, as I have construed it, they are deprived of all right to judicial review of a decision by the Commission which seems to liquidate, at least in one dimension, their contractual right to compensation. This complaint is unfounded.

For under subdivision (e) (2) the Judge may approve a plan only if "satisfied" that all allowances "for expenses and fees incident to the reorganization • • • are within such maximum limits as are fixed by the Commission" *and are "reasonable"*. Thus the petitioners' liens

can be extinguished through a discharge of their claims in these proceedings only if the maxima set by the Commission are such that the allowances made thereunder by the Judge are found by the Judge to be reasonable.

And if the Judge shall not be satisfied that such maxima permit of allowances which are reasonable, under the Act the Judge may return the petition for reconsideration by the Commission. Such is the view of the parties opposing petitions 492 and 611, including counsel for the Commission. The power of a Judge so to return a petition must be recognized unless Congress intended that a Judge should certify an allowance as "reasonable" although convinced that it was inadequate. Such a law would stultify both author and agent. Moreover, the restriction of allowances to inadequate dimensions would tend to nullify the policy of the Act to encourage responsible creditor and class participation in reorganizations. This policy, in a sense, is paramount to the policy of economy in administration; were it otherwise the Act would have prohibited all allowance of compensation to the parties from the estate. But plainly Congress did not want costless reorganizations rather than just reorganizations. It follows that the true policy relating to economy is one adapted to preclude excessive expense,—not to enforce inadequate compensation. Thus understood, the policy collides not at all with that of encouraging useful and responsible creditor representation by the allowance of adequate compensation through which that objective can be achieved.

This view is also completely in harmony with the underlying scheme of the Act. For the Act charges the Commission with the responsibility of determining values and of formulating plans. Yet the plans thus reported can be approved by the Judge only if he is satisfied that they are fair; if not thus satisfied, unless he dismisses the proceedings, he can only return the plan to the Commission for further consideration. And so as to a maximum allowance set by the Commission. The Judge can approve the plan only if satisfied that all allowances are within the maxima set by the Commission *and are reasonable;* failing that, he can only dismiss the proceedings or "refer the proceedings back to the Commission for further action" (subdivision (e), second paragraph). Surely under this provision if the Judge's disapproval were limited to the maxima set by the Commission upon specified petitions for allowances, he need not refer back the substantial provisions of a reported plan: a re-reference of those specified petitions would suffice, accompanied by his "opinion stating his conclusions and the reasons therefor."

To be sure, this seems a cumbersome procedure for the liquidation of an allowance. Indeed, theoretically at least, the procedure may produce a deadlock between the Commission and the Judge which may ultimately block a reorganization. Yet from a practical standpoint, as Congress apparently perceived, in almost every case in which reorganization is indeed feasible a considered exchange of views between the Commission and the Judge will result in a final agreement purged of

inadvertence and extravagance which shall permit of a fair appraisal of services under the particular eye of the Commission and services relating principally to activities before the Judge. Anyhow, Congress deemed it wise to condition the privilege of reorganization upon such an agreement. And if ever a case shall arise resulting in a final deadlock instead of agreement, perhaps the disagreement can be solved by an appeal from the Judge's order disapproving the reasonableness of a reconsidered maximum set by the Commission. However that may be, the petitioners here cannot justly complain that their rights have been insulated from judicial review when judicial sanction is required for the liquidation and discharge of their claims in the bankruptcy proceedings and in the event that the bankruptcy proceedings are dismissed their claims and covering liens are left unimpaired for adjudication elsewhere.

Thus any question as to the validity of an exclusive grant of jurisdiction to the Commission to fix, or even limit, allowances is not involved under the Act. And there is no basis for the constitutional objection which the petitioners invoke.

On these conclusions, the motions to dismiss petitions 492 and 611 must be granted. For these petitions are neither appropriate nor necessary to raise in issue in these proceedings the reasonableness of the maxima allowed by the Commission. That issue was available to the petitioners at the hearing in this court upon their applications for allowances after the Commission

had set maxima under Section 77 (c) (12). On that record without any further expansion, it lay within the power of this Court in these proceedings either to order allowances within the limits of the maxima or to return the applications to the Commission for further action on the ground that the maxima did not permit of adequate compensation.

Nor can the bankruptcy court in these proceedings enforce the petitioners' liens. For the liens are suspended during these proceedings: they may be enforced only if these proceedings are dismissed.

An appropriate order may be submitted.

Dated at New Haven this 3rd day of June, 1942.

C. C. HINCKS,
United States District Judge.

APPENDIX B

In the District Court of the United States for the Southern District of Iowa, Central Division

No. 9434—Bkptcy

IN THE MATTER OF THE FORT DODGE, DES MOINES & SOUTHERN RAILROAD COMPANY, DEBTOR

Order

This matter coming on for hearing on a Special Appearance of The New York Trust Company, as Trustee, challenging the jurisdiction of this court to refer certain questions regarding fees and expenses to the Interstate Commerce Commission. The Interstate Commerce Commission appears and resists the application. Due notice has been given to all parties in interest, and the matter set down for hearing on this date in open court at Des Moines, Iowa. The Interstate Commerce Commission appears by counsel but the New York Trust Company, as Trustee, does not appear by counsel, and the matter being informally discussed and being advised, the Court finds that the Special Appearance referred to should be and the same is overruled and denied.

It is further Ordered that the prior proceedings in this court in referring claims to the Interstate Commerce Commission for action thereon and including all claims for fees and expenses by or

against the New York Trust Company, as Trustee, is confirmed and approved.

The New York Trust Company, as Trustee, excepts.

Signed at Des Moines, Iowa, this 9th day of September, 1941.

(Sgd.) CHAS. A. DEWEY,
Judge, U. S. District Court.

APPENDIX C

As tabulated March 2, 1942, the decisions of the Interstate Commerce Commission in the following nine cases show the following:

Debtor [1]	Amounts claimed			Maximum allowances		
	Mortgage trustees	All parties	Mtg. tr. to all	Mortgage trustees	All parties	Mtg. tr. to all
			Percent			*Percent*
Chicago Great Western [2]	$44,202	$235,228	18.8	$23,702	$112,867	21.0
Chicago, Milwaukee, St. Paul & Pacific [3]	235,240	676,451	34.8	109,669	312,624	35.1
Chicago & Eastern Illinois [4]	86,751	372,321	23.3	47,271	265,815	17.8
Chicago & North Western [5]	347,983	822,082	42.3	175,558	442,844	39.6
Denver & Rio Grande Western	419,586	741,454	56.6	129,522	267,680	48.4
Erie	376,959	690,769	54.6	147,358	306,652	48.1
Missouri Pacific [6]	714,583	1,788,731	39.9	238,569	896,625	26.6
St. Louis-San Francisco [6]	187,236	1,030,765	18.2	64,051	465,251	13.8
New York, New Haven & Hartford [7]	703,741	2,155,052	32.7	230,691	1,005,837	22.9
Total	3,116,281	8,512,853	36.6	1,166,391	4,076,195	28.6

[1] Debtor's trustees and their counsel (regular and special) not included in any case.

[2] Reorganization Managers' and their counsel expenses excluded; therefore, on comparable basis with other cases.

[3] Does not reflect allowance to Robert E. Smith, June 7, 1941, as secretary and expert for stockholders' committees.

[4] Includes only those claims which are applicable to the reorganization proceeding.

U. S. GOVERNMENT PRINTING OFFICE: 1942